

B. J. T., surviving spouse of K. M. T., deceased, asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge George's allocation of dependents' benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. T. died in a work accident on August 25, 2004, while employed by Brundage Bone Concrete, Inc. Mr. T. is survived by his wife, B. J. T., and a posthumous child from that marriage.¹ Mr. T. is also survived by G. T., born on July 16, 2003, to Mr. T. and S. T.. Mr. T. and Ms. T. were never married.

As a result of Mr. T.'s work-related death, the Utah Workers' Compensation Act provides dependents' benefits of \$501 per week. These benefits must be divided in some fashion among Mr. T.'s widow and two children. In addressing this issue, Judge George concluded that Mrs. T. and her child, on one hand, and G. T., on the other hand, were in essentially the same circumstances. On that basis, Judge George awarded one half of the dependents' benefits to Mrs. T. and her child and the other half to G. T., in care of his mother, S. T.. Judge George also concluded that Mrs. T.'s attorney was entitled to a fee of \$500 for his services.

Mrs. T. now challenges Judge George's division of dependents' benefits and award of attorneys fees.²

DISCUSSION

Under various provisions of the Utah Workers' Compensation Act, Mr. T.'s widow and his two minor children are each deemed to be Mr. T.'s dependents. Mrs. T.'s status as a dependent continues for six years from the date of Mr. T.'s death, or for one year after she remarries, whichever period of time is shorter. The children's status as dependents continues until each child reaches the age of 18, and can be extended on a showing of special circumstances. Furthermore, if any dependent should die, that individual's share of dependent's benefits must be redirected to the other surviving dependents. In light of all this variability, any division of benefits among Mr. T.'s current dependents is subject to future modification to account for changed circumstances.

As already noted, Mr. T.'s dependents are entitled to benefits of \$501 per week. Judge George awarded one half to Mrs. T. and her child, and the other half to G. T.. The Appeals Board views this division as inappropriate. Mrs. T., her child, and G. T. **each** have an independent claim to some degree of support from the workers' compensation program. Obviously, the amount of the available benefits is insufficient to fully support them all, but the Appeals Board sees no reason why, under the specific circumstances of this case, each dependent should not receive some assistance.

In light of the foregoing, the Appeals Board concludes that dependents' benefits should be

paid as follows:

- For the period between Mr. T.'s death and the birth of his posthumous child, the benefits should be divided equally between Mrs. T. and G. T..
- Following the birth of Mr. T.'s posthumous child, the benefits should be divided into thirds, with one third paid to Mrs. T., one third paid to the posthumous child in care of Mrs. T., and one third paid to G. T. in care of S. T..
- At such time as Mrs. T. is no longer deemed a dependent (either one year after remarriage or six years from the date of Mr. T.'s death), the benefits are to be divided equally, with one half paid to the posthumous child in care of Mrs. T., and one half paid to G. T. in care of S. T..
- Assuming that G. T. is no longer a dependent after he reaches the age of 18, his right to receive benefits will end and the posthumous child will be entitled to the entire amount of dependents' benefits until that child also reaches 18 years of age. At that time, all dependents' benefits will cease, unless extended by Commission order based on then-existing circumstances.

The Appeals Board now turns to the question of the fee that may be awarded to Wallace Calder, Mrs. T.'s attorney in this matter. Pursuant to § 34A-1-309(1) of the Labor Commission Act, the Commission is vested with "full power to regulate and fix the fees of attorneys." The Commission has exercised this authority by promulgating Rule 602-2-4, Utah Administrative Code. In material part, this rule authorizes attorneys fees on a contingent basis, according to a "sliding scale" set out in the rule. However, such fees are computed only on the amount of "benefits generated" by the attorney's services. The rule defines "benefits generated" as benefits "paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant."

In this case, the required Appointment of Counsel form was signed by Mrs. T. on February 9, 2005. However, no additional benefits were generated for Mrs. T. until May 12, 2005, the date on which Mr. T.'s posthumous child was born to Mrs. T.. It was on that date that the dispute arose as to whether Mrs. T. and her child should share one half or two thirds of the dependents' benefits. In this decision, the Appeals Board has concluded that Mrs. T. and her child should receive the larger share. In effect, this means that instead of receiving \$250.50 per week, they will receive \$334 per week, an increase of \$83.50. However, this increase in benefits only continues so long as Mrs. T. is deemed to be a dependent. Thereafter, dependents' benefits will be divided equally between the posthumous child and G. T., just as they would have been without Mr. Calder's intervention. Pursuant to Rule 602-2-4's sliding scale, Mr. Calder is entitled to receive 20% of that increase beginning May 12, 2005, and continuing until Mrs. T.'s right to receive dependents' benefits ends.

ORDER

The Appeals Board grants Mrs. T.'s motion for review and reverses Judge George's decision. The Appeals Board awards dependents' benefits in the amount of \$501 per week to Mrs. T., Mr. T.'s posthumous child, and G. T. as follows:

- For the period between Mr. T.'s death and the birth of his posthumous child, the benefits shall be divided equally between Mrs. T. and G. T., in care of S. T..
- For the period beginning with the birth of Mr. T.'s posthumous child, the benefits shall

be divided into thirds, with one third paid to Mrs. T., one third paid to the posthumous child in care of Mrs. T., and one third paid to G. T. in care of S. T..

- At such time as Mrs. T. is no longer deemed a dependent (either one year after remarriage or six years from the date of Mr. T.'s death), the benefits shall be divided equally, with one half paid to the posthumous child in care of Mrs. T., and one half paid to G. T. in care of S. T..
- At such time as G. T. reaches the age of 18 and is not otherwise determined to be dependent, his right to receive benefits will end and the entire amount of dependents' benefits shall be paid to Mr. T.'s posthumous child, in care of Mrs. T., until that child also reaches 18 years of age. At that time, all dependents' benefits will cease, unless extended by Commission order based on then-existing circumstances.
- Wallace Calder, Mrs. T.'s attorney, is entitled to an attorneys fee of \$16.70 per week beginning May 12, 2005, to be deducted from Mrs. T.'s dependents' benefits and paid directly to Mr. Calder on a monthly basis. This award of attorneys fees shall end when Mrs. T. no longer qualifies for dependents' benefits.

It is so ordered.

Dated this 8th day of December, 2005.

Colleen S. Colton, Chair

Patricia S. Drawe

I concur in the result.

Joseph E. Hatch

1. Judge George's decision, issued on February 22, 2005, states that Ms. T.'s then-unborn child was due on May 12, 2005. Lacking any information to the contrary, the Appeals Board assumes for purposes of this decision that the child was, in fact, born on that date.

2. Although Judge George also addressed other issues, the parties do not contest his resolution of those issues.